IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.125 of 2007
In
Notice of Motion No.2356 of 2003
In
Suit No.1961 of 1997

Metal Distributors (UK) Ltd. .. Appellant (Org.Plaintiff)

Vs.

Ramesh Tandon. .. Respondent (Org.Defendant)

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Shri M.P.S.Rao i/b K.Ashar & Co. for the appellant.

Shri Ruben Fernandes for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 30TH MARCH, 2007

P.C.

1. Leave to delete Respondent Nos.2 and 3. Amendment to be carried out forthwith.

2. This appeal arises from the order dated 24th January, 2006 passed in Notice of Motion 2356 of 2003. By the impugned order, the notice of motion taken out by the plaintiff for seeking discharge of a bank guarantee has been dismissed. The bank guarantee was

sought to be discharged by the appellant on the ground that the appellant was armed with a decree against the respondent herein in whose favour the bank guarantee has been executed. Undisputedly, the decree which has been passed in favour of the appellant has nothing to do with the bank guarantee which has been executed by the appellant in favour of the respondent, and the bank guarantee relates to the matter in Civil Suit No.1961 of 1997 which is not connected with the subject matter of the suit wherein the appellant had obtained a decree. In the circumstances, no fault could be found with the impugned order dismissing the notice of motion seeking discharge of the bank guarantee.

3. The learned counsel for the appellant has submitted that instead of bank guarantee, the appellant may be allowed to give some other security and has volunteered to secure the respondent by the appellant by depositing in the Court a Fixed Deposit Receipt of his agent, namely, Francis Klein & Co. (Bom.) Pvt. Ltd. in relation to the deposit of sum of Rs.16,20,000/- (Sixteen Lakhs and Twenty Thousand) with the Bank of India under Receipt No.8808422 in Account No.000355210000204 at Ballard Estate Branch of the said Bank. Though the deposit is shown to be for

a period of 1 Year, 1 Month and 10 Days, learned counsel for the appellant, upon taking instructions from the appellant, states that the appellant undertakes to retain the said amount in a Fixed Deposit till and until the disposal of the Suit No.1961 of 1997 or any order in that regard being passed prior to the disposal of the said suit by the Court. We accept the said statement and the undertaking on behalf of the appellant, and direct the modification of the order whereby the appellant was required to furnish bank guarantee. The bank guarantee is ordered to be discharged while accepting the fixed deposit in the sum of Rs.16,20,000/- (Sixteen Lakhs and Twenty Thousand) by the appellant in the matter, as stated above. The appellant shall deposit the original receipt in relation to the fixed deposit with the Court and also shall inform the concerned Bank that the deposit is subject to the charge in the said Civil Suit No.1961 of 1997. The appellant shall not be entitled to withdraw the said amount or any interest accrued thereon till and until disposal of the said Civil Suit No.1961 of 1997 or any order to be passed therein in that regard. The appellant shall be entitled to take appropriate steps for renewal of the said deposit as and when the deposit in the Bank gets matured for the purpose of

renewal. The appellant shall file an affidavit in the Court about intimation of all these facts to the concerned Bank. Such affidavit should be filed within 15 days in the Court by the appellant. On filing such affidavit as above, the bank guarantee shall stand discharged.

4. Certified xerox copy of the original Fixed Deposit Receipt is taken on record and marked "X" for identification.

5. The appeal is partly allowed and the impugned order accordingly stands modified in the above terms.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)